Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Request for Expedited Declaratory Ruling Concerning the Territorial Exclusivity Rule, Section 73.658(b) of the Commissions Rules	)	MB Docket No. 04-75
	)	

REPLY COMMENTS

Max Media of Montana LLC ("Max"), the licensee of television broadcast station KTGF, Great Falls, Montana, by its attorneys hereby submits Reply Comments in accordance with the Public Notice in the above-referenced matter. Max Media responds to the Comments of NBC and Sunbelt Communications Company ("Sunbelt"), which, when read collectively, are quite reminiscent of the scene in The Wizard of Oz in which the wizard is caught standing at the microphone uttering, "Don't pay attention to the man behind the curtain." In that scene, the wizard has been exposed and there is nothing he can do other than argue the impossible. There is no way to pull back the curtain. Similarly, there is no way for NBC to take back the 1999 Letter to Sunbelt. Consequently, NBC and Sunbelt Comments argue strained interpretations of the facts, and make meritless legal arguments.

I. THE DISTORTED FACTUAL ARGUMENTS OF NBC AND SUNBELT LACK ANY SUPPORTIVE EVIDENCE.

NBC and Sunbelt have done much to distort the facts, without introducing a single bit of objective evidence – documentary or testimonial in nature.[1] Many of the factual

[1] NBC suggests that Max sat on its rights in not bringing this matter to the attention of the Commission sooner. In point of fact, NBC is trading on Max's preference to avoid litigation. Max did not discover the 1999 Letter until after it closed on the purchase of KTGF in 2001 (that accounts for two years of the delay), and, for many years following that discovery, Max made good faith efforts to resolve this matter privately with NBC. NBC did not

inaccuracies in the Sunbelt and NBC Comments are corrected in the attached Declaration of A. Eugene Loving ("Loving Declaration"), attached hereto as Exhibit A, and are further clarified in the accompanying Engineering Statement of Robert duTreil, Jr., of duTreil, Lundin and Rackley, Inc., Consulting Engineers ("Engineering Statement"), attached hereto as Exhibit B. Taken together, the Loving Declaration and the Engineering Statement correctly demonstrate that NBC has <u>not</u> made a rational business decision based on coverage or quality in choosing to terminate KTGF as an NBC affiliate in favor of KTVH, Helena, MT. The decision has been based on other factors and considerations not disclosed in the comments of Sunbelt or NBC.

NBC argues that the factor preventing or hindering KTGF from broadcasting any program of the network is the termination of its network affiliation agreement. This begs the question "why is the network affiliation agreement to be terminated?" The answer is found in the evidence of an arrangement between Sunbelt and NBC regarding multiple affiliations for Sunbelt, including expanded territorial exclusivity for KTVH and its satellite stations. In that regard, NBC's Comments are most significant in what they lack. NBC does not put forward any objective evidence of its <u>business</u> reasons for terminating the KTGF affiliation. There is no business-judgment explanation grounded in a <u>business</u> analysis (of the type mentioned elsewhere in the 1999 NBC Letter); there is no evidence of breach of the affiliation agreement by Continental or by Max; and there is no evidence of any NBC's dissatisfaction with KTGF's performance as an NBC network affiliate.

In sum, NBC and Sunbelt are asking the Commission to take NBC's <u>subjective</u> word that it exercised "independent" business judgment. In contrast, Max has produced

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definitively admit its intention to terminate the KTGF affiliation until last fall, as indicated in the correspondence and e-mail attached to Loving Declaration in the Request.

objective evidence to the contrary that neither NBC nor Sunbelt have rebutted or clarified with any additional objective evidence, documentary or testimonial in nature. There is not a scintilla of *objective evidence* that the termination of KTGF's NBC network affiliation agreement is the product of NBC's independent business judgment. There is not a scintilla of documentary evidence in support of this assertion.

Simply put, termination of KTGF's network affiliation agreement was a point of value in the arrangement between NBC and Sunbelt described in the 1999 NBC Letter ("Arrangement"). Under the Arrangement at issue here, expanded network territorial exclusivity for a station licensed to Helena, KTVH, and its satellites, extending into the community of Great Falls, is a form of compensation from NBC to Sunbelt. Few could argue that it does not have substantial value. This value was apparently a part of the overall calculus of network compensation for Sunbelt in the multi-station affiliation arrangement.[2]

The loss of KTGF's NBC network affiliation is not the "result of normal and expected market forces" as Sunbelt alleges. It is, however, the result of "private business decisions of NBC and Sunbelt" as Sunbelt's Comments state. Sunbelt alleges that the loss of KTGF's NBC network affiliation "is a direct result of its own business practices and NBC's preference for Sunbelt as a partner . . . [.]" Comments at 2. This allegation is complete unsupported with any facts related to the business practices of KTGF or its owners, current or past, during the current affiliation term.

The interpretations of the 1999 NBC Letter urged by NBC and Sunbelt are self-serving and wholly unconvincing. First, if NBC's decision to terminate KTGF's network

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[2] There may have been other elements to the overall transaction between Sunbelt and NBC, which, if known, could shed greater light on the compensation issue, but neither Sunbelt nor NBC have submitted any clarifying

affiliation were completely unrelated to the multi-market network affiliation transaction with Sunbelt described in the 1999 NBC Letter, why did NBC include it, mention it, and condition it in the sixth paragraph of the letter? Second, if NBC's interpretations are correct, where is the supporting evidence? It is hard to imagine that the 1999 NBC Letter exists in isolation, without preceding and subsequent following correspondence between the parties. Why was that correspondence not introduced in support of these arguments? The strong likelihood is that such correspondence, if it exists, would be terribly damaging to the interpretations urged by NBC and Sunbelt.

NBC rests its interpretive argument on the first sentence in the sixth paragraph of the 1999 NBC Letter. That sentence suggests the decision to terminate KTGF's network affiliation was a matter in the past tense because of the phrasing "NBC *had* made . . ." However, the Loving Declaration aptly points out that the entire letter must be read in the context of on-going negotiations between Sunbelt and NBC.[3] There were clearly antecedent discussions and agreements leading up to the 1999 NBC Letter. Likewise, it is entirely conceivable that in drafting the 1999 Letter, NBC was cognizant of the potential for discovery of the network territorial exclusivity rule violation, and included that wording to create the impression that the decision to terminate the network affiliation agreement was an independent antecedent to the multi-station affiliation arrangement. That NBC and Sunbelt omitted the terms and conditions of the 1999 NBC Letter from the formal affiliation agreements that followed, is further evidence of the intention to conceal the Arrangement's rule violation from the Commission.

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documentation. There is only the 1999 NBC Letter, and that letter clearly includes the termination of KTGF's network affiliation as an element in the multi-station affiliation arrangement.

Not surprisingly, notice of NBC's termination of KTGF's NBC network affiliation was given last week – a month before the contractual deadline. In so doing, NBC intentionally creates the false impression that this decision is independent from the terms and conditions in the 1999 NBC Letter – as Sunbelt has not met the stated conditions yet. In fact, NBC is free to insist on the fulfillment of those conditions before amending the KTVH affiliation agreement to expand upon KTVH's network territorial exclusivity. Moreover, in practical effect, NBC does not even have to amend the KTVH network affiliation agreement to confer upon KTVH the benefit it bargained for in the multi-station affiliation arrangement described in the 1999 NBC Letter – expanded territorial exclusivity. By default, Sunbelt becomes the only station owner with access to NBC programming for distribution in the community of Great Falls.

II. NBC'S AND SUNBELT'S LEGAL ARGUMENTS ARE MERITLESS.

It is telling that neither NBC nor Sunbelt address the regulatory history of Section 73.658(b) in their legal arguments, especially the portions of the regulatory history as set forth and cited by Max in the Request. The purpose and intention of the rule is not explained away by NBC, or by Sunbelt. The facts of the situation involving termination of KTGF's network affiliation agreement are not distinguished from the example described by the Commission when it adopted the rule in 1956. Instead, NBC and Sunbelt make three very weak arguments: (1) that Max has failed to meet certain incorrect burdens of proof under the rule; (2) that the rule does not prohibit Sunbelt's conduct; and (3) that the rule should be re-interpreted to permit the prohibited conduct.[4]

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[3] Loving Declaration at ¶ 7.

[4] NBC relies on a case that is totally irrelevant and unworthy of discussion. The case involved no station conduct – only network conduct – and it involved the network favoring its owned and operated station. *See RCA Corp.*, 60 R.R.2d 563 (1986).

First, Max has not failed to meet its burden of proof. Section 73.658(b) does not prohibit NBC from affiliating with stations in other communities. The issue is not affiliation; the issue is *territorial exclusivity*. Where network territorial exclusivity is involved, the Commission's rule prohibits a station such as KTVH from having any arrangement which <u>hinders</u> or <u>prevents</u> access to the network's programs by a station such as KTGF in a neighboring community. There is <u>no</u> authority supporting NBC's argument that the party harmed by a station's violation of the network territorial exclusivity rule must show the station network arrangement is the "but for" cause of a network's decision. The burden of proof is not "beyond a reasonable doubt" – it is "more likely than not." The Sunbelt/NBC Arrangement more likely than not hindered or prevented. Therefore, the rule is violated.

Similarly, Section 73.658 does <u>not</u> require a showing that the station violating the rule "coerced" or "restricted" the network from affiliating with the station that is harmed, as NBC urges. "Restriction" or "coercion" is not part of the rule. Proof of the existence of an arrangement between a station and a network is sufficient, if that arrangement "prevents or hinders" a station located in another community from obtaining the network's programming.

Second, Section 73.658(b) <u>does</u> prohibit the conduct at issue. The key precedent relied upon by both NBC and Sunbelt, referred to as *Mullin* in the Comments of NBC, involves completely different facts. As noted in the Request, at p. 13, the Mass Media Bureau framed the issue in that case as follows: ". . . whether a multi-market agreement, which results in the shift of affiliates in a community of license because of concerns with other markets, also part of that agreement, violates our territorial exclusivity rule." ABC contended that it was not forced to change the Phoenix station affiliation, but it did so as an exercise of its independent business judgment. Scripps and ABC made two arguments: (1) that Section 73.658(b) only prohibits agreements which hinder or prevent a station in an overlapping or neighboring area from carrying a network's programming; and (2) that Section 73.658(b) applies only where a community of license is being deprived of its own network affiliate – not where there is a shift of network affiliation in the same community of license. These two factual distinctions are present in the facts of the arrangement involving NBC and Sunbelt.

The *Helen Broadcasting* authority cited by both NBC and Sunbelt is irrelevant because the facts of that case are materially different and the Commission resolved the matter by applying a different rule section. This authority has been <u>misrepresented</u> to the Commission as a relevant precedent when in fact it does not interpret or apply the rule at issue. This "authority" is a letter decision disposing of an informal objection filed against the assignment of licenses for television stations to the Boston Celtics. The party filing the objection alleged that the acquisition of these television stations by the Boston Celtics enabled the Celtics organization to leverage its ownership of a Boston television station, WFXT(TV), to the detriment of broadcast stations outside of the Boston market, by denying them access to sports programming WFXT(TV) would be producing after the acquisition was completed. This was not a case involving a major television network and network affiliations. It involved a regional program producer and distributor. The Commission dismissed the informal objection by applying Section 73.658(m) – not 73.658(b). *See* citations to *Territorial Exclusivity in Nonnetwork Programming*, 42 FCC 2d 175 (1973), reconsidered in part, 46 FCC 2d 892 (1974); *Report on Chain Broadcasting* (Docket No. 5060), 57-59 0 (May, 1941).

In sum, this was not a case involving network programming, or Section 73.658(b). Both parties citing this authority misrepresented the case's relevance and applicability. Counsel failed to bring a material distinction to the attention of the Commission.

The fact that KTVH can cover the community of Great Falls with the signal of a proposed booster station is of no legal import to the issue before the Commission. The issue is whether Sunbelt violated the network territorial exclusivity rule when it entered into the arrangement with NBC circa 1999. At that time, there was no Sunbelt station licensed to the community of Great Falls, and there was no proposal for any Sunbelt station to be licensed to the community of Great Falls before the Commission. Indeed, Sunbelt chose to bargain for network territorial exclusivity first – in violation of the rule, and acquire a station later, *i.e.*, violate the rule and then, if possible, find a way to cure the violation later. Sunbelt has been unsuccessful in the search to acquire a full power station in Great Falls, and its booster station and low power station applications, even if licensed, would not cure the rule violation, as the rule as drafted was intended to apply to full power stations.

Third, Sunbelt attempts to persuade the Commission to reinterpret Section 73.658(b) in light of the changed circumstances of today's television marketplace (arguably more television networks and less scarcity of network programming). This argument neglects the obvious – that all networks are not equal. Moreover, the case support for Sunbelt's legal argument is entirely lacking. The rulemakings cited in Sunbelt’s Comments all left the network territorial exclusivity rule intact and in full force and effect.

Sunbelt’s legal argument is built on the mistaken notion that Section 73.658(b) was intended only to prevent anti-competitive conduct in the pursuit of network affiliations by stations. Indeed, it was intended to prevent such conduct, but that is not all. There is a separate and independent rationale for Section 73.658(b) grounded in the policy of Section 307(b) of the Communications Act, *i.e.*, localism. Because the rule expressly focuses on communities – and defines “community” as “the community specified in the instrument of authorization as the location of the station" – the linkage to Section 307(b) localism is clear and unambiguous. Local communities are, in part, the beneficiaries of the rule's protections.[5] That is the continuing relevance and importance of this rule section – in addition to preventing anti-competitive conduct.

Even if the Commission were sympathetic to Sunbelt's legal argument, the fact remains that Sunbelt chose to violate the rule as it stands now, and Sunbelt did not make these arguments in support of a timely waiver request before entering into the arrangement with NBC in 1999. The Commission has repeatedly applied its rules to violators in instances where a waiver might have been granted if sought. Therefore, even if the Commission were enamored with Sunbelt's argument, it should not hesitate to find the violation of Section 73.658(b) on the facts presented here.

Finally, although NBC is correct in observing that the scope of the network territorial exclusivity rule does not reach network conduct directly, that does not mean that NBC's conduct in this matter is lawful, just, or beyond reproach. Because the Commission's direct jurisdiction over broadcast television networks has been extremely limited, a network may not violate a Commission rule when it engages in illegal conduct. Moreover, as network ownership of broadcast television licensees has been expanding, it may be timely for the Commission on its own motion to question and revisit its jurisdictional limits regarding networks under circumstances such as these. Clearly, NBC and Sunbelt are acting in concert; each and every step described in the 1999 NBC letter has occurred.

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[5] Local communities are to be served by stations licensed to serve them. Network affiliations to such local stations, serving local communities, are not to be disturbed by ambitious competitors in neighboring communities seeking to expand their territorial exclusivity in a piggish manner.

III. CONCLUSION.

The basic facts constituting the violation of the network territorial exclusivity rule are not in dispute. Because the only evidence in the record of his proceeding has been furnished by Max, and NBC and Sunbelt have simply challenged the meaning of that evidence and Max's interpretation of the FCC rule at issue, there are no disputed issues of material fact regarding the interpretation of Section 73.658(b) of the Commission's rules, 47 C.F.R. § 73.658(b), requiring an evidentiary hearing. This matter can be resolved by the Commission expeditiously by simply declaring the facts presented a violation of the network territorial exclusivity rule.

Max has met its burden of proof in establishing the facts necessary to find a violation of the rule. Given the existence of the arrangement between Sunbelt and NBC, given the subsequent facts indicating that the Arrangement has been executed by the parties, and given the absence of any other credible explanation for why NBC is terminating the network affiliation agreement of KTGF, the Arrangement is more likely than not the cause of the termination of KTGF's network affiliation agreement.

Respectfully submitted,

MAX MEDIA OF MONTANA LLC

By: ______/s/___________________________

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May 10, 2004

#1041873

DECLARATION OF A. EUGENE LOVING

Under penalty of perjury, I, A. Eugene Loving, Chairman and Chief Executive Officer of Max Media LLC ("Max"), the parent company of Max Media of Montana LLC and Max Media of Montana II LLC, hereby declare that:

1. On May 7, 2004, Max received formal notice from NBC of its intention not to renew the NBC affiliation for KTGF, Great Falls, Montana (attached to this declaration beneath Tab 1). By this decision, NBC has decided to abandon the distribution of its network signal in the community of Great Falls without ever having an issue with the performance of the licensee of the affiliated station, MMM License LLC. While NBC has the legal right to decide where and with what stations to affiliate, the facts surrounding NBC's decision regarding KTGF reveal interference with the exercise of that business judgment by Sunbelt Communications Company.

2. I am aware that KTGF provides a very high quality signal throughout the community of license, and offers very high quality local news and public service. In contrast, Sunbelt's stations in Helena, Havre, and Lewistown, do not provide significant coverage to the community of Great Falls; certainly not comparable coverage in terms of areas and population served. Max retained the services of Robert duTreil, Jr., a consulting engineer with duTreil, Lundin and Rackley, to prepare an engineering statement comparing the coverage of KTGF, Great Falls, Montana, versus Sunbelt's stations in Helena, Lewistown, and Havre, Montana.

3. Max Media would prevail in any comparison of its record as a broadcaster against Sunbelt's. Max has been and is now a multiple NBC-affiliated station owner. Our company is as credentialed as is Sunbelt when it comes to news and community involvement.

Max believes its past relationship with NBC to be excellent. That is why Max remains frustrated and puzzled by NBC's decision.

4. The purpose of this comparison is not to argue the merits of KTGF as the better choice of affiliate, but simply to correct the record with respect to the arguments in Sunbelt's Comments that NBC's decision to affiliate with KTVH was a product of independent business judgment regarding a superior coverage choice for NBC. Nothing could be further from the truth. Sunbelt Relies on a pending application for a low-power booster station at Great Falls to justify its assertion that it in fact provides coverage to the community of Great Falls. Even factoring in the booster station, KTGF is the better coverage choice as demonstrated by the engineering comparison. Sunbelt's Comments offer no such authoritative comparison, only the unsupported arguments of Sunbelt's lawyers.

5. NBC did not inform Max of its intention not to renew the KTGF network affiliation agreement at the time that Max acquired the station in 2001. The seller from which Max acquired the station, Continental Television ("Continental"), has informed me that NBC did not disclose its intention not to renew the KTGF's network affiliation agreement to Continental before the sale to Max. Max does not have any proof that the prior owner, Continental, ever knew of the agreement made with Sunbelt in 1999. In fact, when Max discussed the relationship Continental had with NBC, the officers of Continental, prior to Max's closing on KTGF, assured Max that they had discussed the issue of Sunbelt's satellite stations in the Great Falls DMA with NBC and had been **assured** that the affiliation in Great Falls was not at risk. I have recently talked to an officer of Continental to review this issue again and was told that a formal meeting was held with NBC regarding this matter. I also learned from Continental that the road for NBC affiliations with Sunbelt's satellite stations in Havre and Lewistown was paved by a change in

the scope of exclusivity in the 1996 NBC network affiliation agreement with KTGF, because, previously, the scope of exclusivity in KTGF's NBC affiliation agreement was the entire Great Falls DMA. Apparently, it was subsequently limited to the community of Great Falls, thereby permitting new NBC affiliates in Harve and Lewistown for the benefit of Sunbelt.

6. For the record, the assertion of Sunbelt's counsel on page 11 of Sunbelt's Comments that NBC decided as far back as April 26, 1999 not to renew its affiliation with *Max*, is patently false and misleading. Max was not the licensee of KTGF or the affiliate at that time. Max acquired the station after that time, and Max was not even interested in the station in 1999. Whatever the relationship was between NBC and Continental, Max had no reason to believe there was any basis for termination of the network affiliation agreement.

7. By my reading of the entire April 26, 1999 letter from NBC to Sunbelt, it appears that both Sunbelt and NBC had negotiated previously to reach agreement on the basic terms of a multi-market network affiliation arrangement. The 1999 letter simply recounts the material parts of that arrangement, including the conditional termination of KTGF's network affiliation agreement in Great Falls in favor of a future expanded affiliation with KTVH in Helena. The first sentence of the sixth paragraph of the letter, which begins with "NBC had made a decision that it will not renew its affiliation agreement with Channel 16 in Great Falls, Montana," does not, in my reading, of the letter mean that NBC's decision regarding the recent notice of termination of KTGF's NBC affiliation agreement was reached independently. Indeed, it is an integral part of the arrangement with Sunbelt described in the letter and subject to specific conditions. It is entirely conceivable to me that NBC included the first sentence in the sixth paragraph in an attempt to "sanitize" what it knew at the time to be a violation of the network territorial exclusivity rule by the stations involved, just in case the letter was discovered by third

parties – an event that NBC hoped would not occur, as indicated in NBC's characterizing the contents of the correspondence as "confidential."

8. NBC's Comments mischaracterize KTGF as a station that has frequently changed hands. The fact is that Continental (Jim Colla, Continental's President) put the station on the air in 1986, investing significant money in a small market, and giving NBC its first full-power distribution in that part of the state and creating a real service for the community. Max bought the station in 2001 and is its second owner, which is one turnover. I don't think this is a "frequent turnover." Max's recent decision to divest KTGF was driven by many factors, including the illegal arrangement between NBC and Sunbelt.

9. NBC's Comments further state that Max failed to notify NBC of unilateral changes to its NBC affiliation in Nacogdoches, Texas. This is an outright falsehood. Max was not the holder of any NBC affiliation in Texas and had no obligation to notify NBC about anything when it recently purchased KLSB.

10. NBC also refers to Max's lack of notification concerning the filing of an FCC application for assignment of KTGF to a trust. On October 9, 2003, Max sent a six-page letter to Randy Falco, Group President of NBC via Federal Express. The first paragraph of that letter informed Mr. Falco that Max was going to file a transfer application at the FCC regarding its agreement to purchase the Dix stations in Montana, which required a "special waiver" from the Commission. As an experienced broadcast executive, I believe Mr. Falco understood that Max would have to divest KTGF in Great Falls and could not own both the NBC and ABC stations under the current FCC rules. Shortly thereafter, Max filed applications with the FCC offering to put one station or the other in trust as one way to resolve the issues.

11. The economics of smaller-market broadcast television have increasingly placed pressure upon station owners to find economies of scale wherever possible through local marketing arrangements, joint sales arrangements, and FCC-sanctioned duopolies. The Great Falls broadcast television community is part of a market facing such intense economic pressure. In such a competitive marketplace, an NBC affiliation for KTGF in the Great Falls community is critically important to the survival of the station.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 8, 2004.

A. Eugene Loving

TECHNICAL STATEMENT
CONCERNING PREDICTED COVERAGE OF GREAT FALLS, MONTANA
PREPARED FOR
MMM LICENSE LLC
GREAT FALLS, MONTANA

The instant statement and the attached map identified as "Figure 1" were prepared on behalf of MMM License LLC, licensee of KTGF(TV), Great Falls, Montana. The map depicts the predicted City Grade coverage areas of stations KTGF(TV), KTVH(TV), KBBJ(TV) and KBAO(TV) based on the Longley-Rice prediction model in the vicinity of the city of Great Falls (shown are the city limits of Great Falls).

The predicted coverage shown in the attached Figure 1 was computed according to the Longley-Rice propagation model version 1.2.2 as generally described in FCC OET Bulletin No. 69 using the parameters listed in Table 4 of the FCC Bulletin.[*] Median signal levels were predicted with no use of a dipole adjustment factor or clutter loss factors. The U.S.G.S. 3-second linearly interpolated terrain database was employed in the calculations.[†] For VHF channels City Grade coverage is defined as a median 77 dBu electric field strength, for UHF 80 dBu.

As indicated in the attached Figure 1, coverage of KTGF is shown with orange hatching, and it provides 100% service within the city limits of Great Falls, having a 2000 Census population of 55,455. The city grade coverage areas of KTVH, KBBJ and KBAO are shown on the map with green, blue and red cross-hatching,

[*] *See Longley-Rice Methodology for Evaluating TV Coverage and Interference*, OET Bulletin 69, Federal Communications Commission (February 6, 2004)
[†] The U.S.G.S. 3-second database is based on re-sampled 1-second terrain data.

respectively. As indicated in Figure 1, the KTVH, KBBJ and KBAO facilities provide no coverage (0%) within the city limits of Great Falls.

This statement and associated exhibit were prepared by me or under my direction and are true and correct to the best of my knowledge and belief.

Louis Robert du Treil, Jr., P.E.

du Treil, Lundin & Rackley, Inc.
201 Fletcher Ave.
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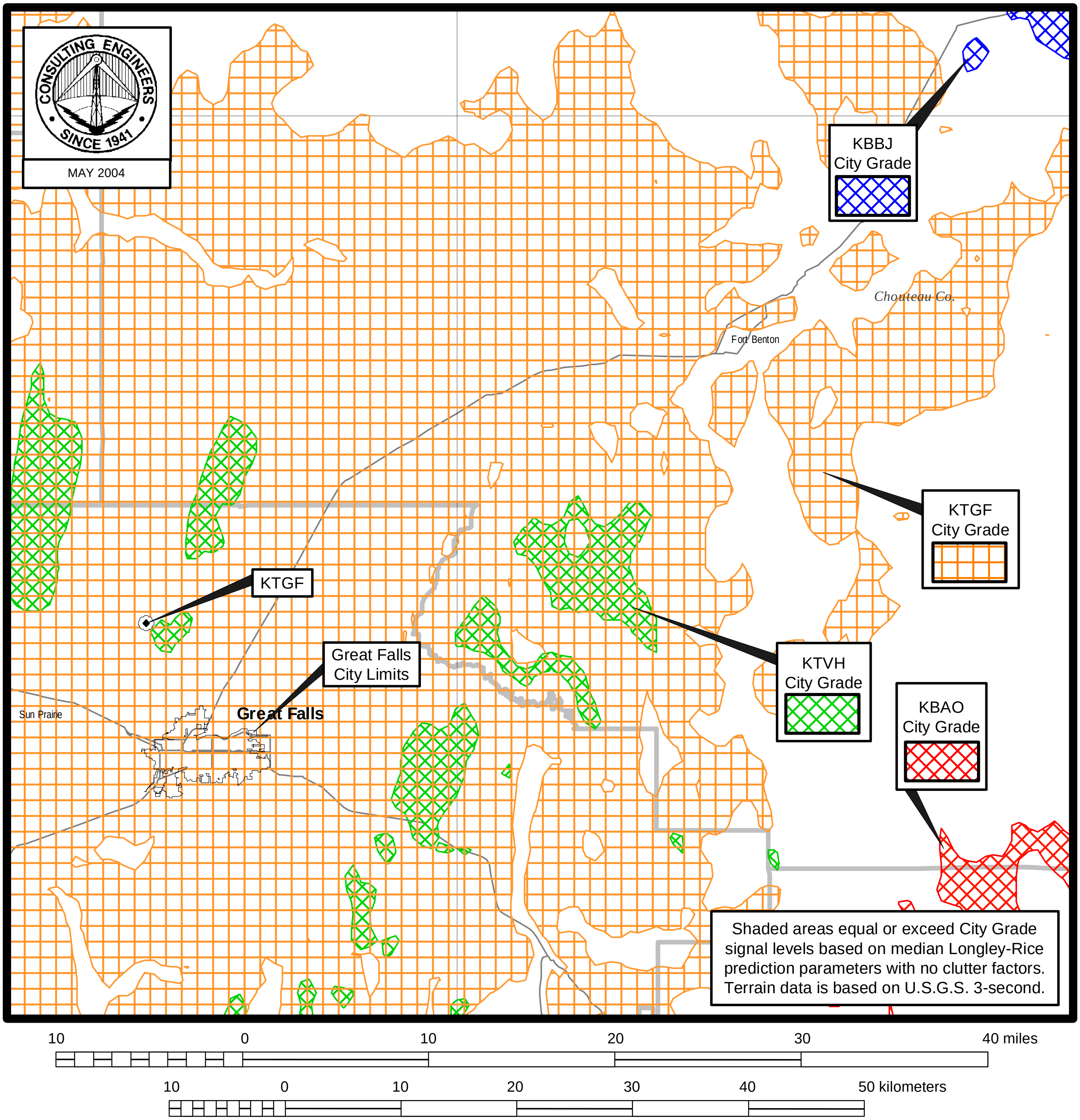
May 10, 2004



PREDICTED CITY GRADE COVERAGE BASED ON LONGLEY-RICE PREDICTION MODEL

du Treil, Lundin & Rackley, Inc. Sarasota, Florida

CERTIFICATE OF SERVICE

I, Mark Blacknell, do hereby certify that on this 10th of May, 2004, a copy of the foregoing "Reply Comments" was served by first class United States mail, postage prepaid, addressed to:

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